

PUBLIC

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Cruel, inhuman and degrading treatment/Arbitrary arrest/Unlawful detention

DEMOCRATIC REPUBLIC  
OF CONGO (DRC)

Kakule Kahemu (m), aged 16, former child soldier

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Former child soldier Kakule Kahemu is held in overcrowded and insanitary conditions in Butembo Central Prison, North Kivu Province, along with adult prisoners. He has been charged with an offence under the Military Penal Code which is only applicable to adults.

Kakule Kahemu was recruited into a *mayi-mayi* (local, usually ethnically-based, militia) armed group around June 2007, but ran away in early November and attempted to join the national demobilisation process, established by the DRC government with international support, to rehabilitate former child soldiers and support them in a return to civilian life. He handed himself in to a local police commander, who sent him to army headquarters in Butembo.

On 12 November the local Military Prosecutor's Office charged Kakule Kahemu with "participation in an insurrectionary movement" (*participation à un mouvement insurrectionnel*) under Articles 136 and 137 of the Military Penal Code, an offence that carries between five and 20 years' imprisonment.

Kakule Kahemu was transferred to Butembo prison on the same day. There he is forced to share his cell with adult prisoners. The prison authorities do not give the inmates regular food rations, and they are forced to rely on family and friends to bring them food. An Amnesty International delegation visited the prison in late February, and found that Kakule Kahemu and the other prisoners had not eaten for two days.

Military law does not apply to anyone aged under 18 and its application in this case is unlawful. Article 114 of the 2002 Military Judicial Code states that "military jurisdictions have no competence regarding persons under 18 years of age" (*Les juridictions militaires sont incompétentes à l'égard des personnes âgées de moins de dix-huit ans*). Moreover, the DRC is a state party to the UN Convention on the Rights of the Child (CRC). Article 37 (c) of which states that "every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so"

#### **BACKGROUND INFORMATION**

Tens of thousands of children were used as fighters, domestic servants and sexual possessions by armed groups and government forces during the DRC conflict that began in 1996. The conflict, sparked by political and ethnic divisions in the eastern Kivu provinces, rapidly also evolved into a struggle for control of the DRC's vast mineral and other natural wealth. At its height, the conflict involved dozens of Congolese and foreign armed groups, the national army and for a time government forces of five neighbouring states. The conflict was characterized by mass violations of international humanitarian law by combatants against civilians.

As part of a national peace process that began in 2003, many of these children were demobilised and returned to their families, although thousands of children are still believed to be with the armed groups or have not been accounted for in the government demobilisation programme. The regular army formally ended the recruitment and use of children in November 2004. However, a number of children are still reported to be in their ranks and the army has made regular use of children, sometimes forcibly, to transport items such as munitions and rations. In North-Kivu, where conflict is continuing, there has been a recent resurgence in the recruitment of children by armed groups, including many children who had been reunited with their families.

Under the demobilisation process, children who served with Congolese armed groups and the regular army should be released into the care of international child protection agencies, such as UNICEF, or one of their local NGO partners. These agencies provide the children with transitional care and arrange for each child to be reunited with their family where possible. Once returned to their families, children should benefit from a package of support at the community level. This has not been possible in all cases, however, particularly in North-Kivu province where NGO support programmes have been badly disrupted by the continuing violence.

**RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in French, English, Swahili, Lingala or your own language:**

- calling on the authorities to release former child soldier Kakule Kahemu immediately and unconditionally into the care of an accredited child protection agency;
- calling on the authorities to remind all military judicial personnel that Military Law does not apply to anyone aged under 18 and that any children detained by the military authorities should be released immediately or handed over to the civilian authorities.
- calling on the authorities to fulfil their obligations under Article 37 (c) of the CRC, and ensure that Kakule Kahemu and other detainees under 18 are held separately from adults.

**APPEALS TO:**

Chief Military Prosecutor

General Joseph Ponde Isambwa  
Auditorat General des FARDC  
Kinshasa, République Démocratique du Congo  
**Salutation: Dear General/Monsieur le Général**

Head of State

Son Excellence Joseph KABILA (PPRD)  
Président de la République  
Présidence de la République  
Palais de la Nation  
Avenue de Lemera  
Kinshasa-Ngaliema, République Démocratique du Congo  
**Email: cabinet\_president@yahoo.fr**  
**Salutation: Dear President Kabila/Son Excellence Monsieur le Président**

National Defence, Demobilization and War Veterans

Mr Chikez Diemu  
Ministre de la Défense nationale et des Anciens Combattants  
Ministère de la Défense Nationale et des Anciens Combattants  
BP 4111  
Kinshasa-Gombe, République Démocratique du Congo  
**Salutation: Dear Minister/Monsieur le Ministre**

Justice and Human Rights

Mr Mutombo Bakafwa Nsenda  
Ministre de la Justice et Droits Humains  
Ministère de la Justice  
228 Avenue de Lemera  
BP 3137  
Kinshasa-Gombe, République Démocratique du Congo  
**Email: min\_droitshumains@yahoo.fr**  
**Salutation: Dear Minister/Monsieur le Ministre**

**COPIES TO:** diplomatic representatives of the Democratic Republic of Congo accredited to your country.

**PLEASE SEND APPEALS IMMEDIATELY.** Check with the International Secretariat, or your section office, if sending appeals after 1 May 2008.